

REMARKS

In the May 5, 2008 Office Action, the Examiner noted that claims 1-9 were pending in the application, rejected claims 1, 2 and 7-9 and objected to claims 3-6 as being dependent upon a rejected base claim, but containing allowable subject matter. Claims 1, 2 and 7 have been cancelled herein without prejudice or disclaimer. Claims 3-6, 8 and 9 have been amended herein. New claims 10-19 have been added herein.

Claims 3-6, which previously depended from claims 1 and 2, have been amended herein into independent form by incorporating the features of claim 1. Claims 8 and 9 have been amended herein to include allowable subject matter as described in the Office Action on pages 7-9. New claims 10 and 11 have been added to recite features similar to claim 4, but depending from claims 9 and 8, respectively. New claims 12-15 have been added and correspond to claims 3-6, respectively, but incorporate the features of claim 2. New claims 16 and 17 (directed to a method) have been added and include features similar to those recited in claims 5 and 6, respectively. New claims 18 and 19 (directed to a computer-readable storage) have been added and include features similar to those recited in claims 5 and 6, respectively.

Thus, claims 3-6 and 8-19 remain pending for consideration, which is respectfully requested. No new matter has been added.

Objection to the Claims

The Office Action objected to claim 6 for the reasons set forth in item 2 on page 2. Applicants have amended claim 6 for clarification purposes to recite "an extracting portion that extracts a part of the object from the image by comparing the background image with the image" (last clause). Further, Applicants respectfully direct the Examiner's attention to the specification page 17, line 23 to page 18, line 13, which states the extracting portion uses a background image stored in the background image memory portion 206 for comparison between the background image and an obtained image.

In view of the above, Applicants respectfully request the objection be withdrawn.

Rejections under 35 U.S.C. 103(a)

On pages 4-5 of the Office Action, claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Okino (U.S. 4,768,876) in view of Sato. On pages 5-7 of the Office Action, claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over Rice (US 4,699,149) in

view of Tatsuhiko et al. and in further view of Sato. Claims 2 and 7 have been cancelled herein, and therefore, the rejections are moot.

On pages 3-4 of the Office Action, claims 1, 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsuhiko et al. (JP 2001-230970) in view of Sato (US 5,204,709). Claim 1 is has cancelled herein, and therefore, the rejection thereof is moot.

The rejection is respectfully traversed to the extent that it applies to amended claims 8 and 9. Applicants submit that claims 8 and 9 patentably distinguish over the cited art.

As conceded by the Office Action, on pages 7 and 8, the cited art fails to disclose the features as recited by amended claims 8 and 9.

For example, claim 8 recites the feature of **"determining whether the subject surface is perpendicular to an axis along a shooting direction of the image taking device in accordance with the distances measured"** (lines 8-9, emphasis added), which the cited art does not disclose (see Office Action, page 7, lines 10-13). Further, claim 8 recites "taking the image if it is determined in said determining that the subject surface is perpendicular to the axis and one of the distances measured is within a predetermined range" (lines 10-13), which the cited art fails to disclose (see Office Action, page 7, lines 16-21). Therefore, Applicants submit that claim 8 patentably distinguishes over the cited art.

Claim 9 recites:

determining whether the subject surface is perpendicular to an axis along a shooting direction of the image taking device in accordance with the distances measured; and taking the image if it is determined in said determining that the subject surface is perpendicular to the axis and one of the distances measured is within a predetermined range

(lines 9-14). Therefore, claim 9 patentably distinguishes over the cited art.

In view of the above, Applicants respectfully request the rejection of claims 8 and 9 be withdrawn.

Allowable Subject Matter

On page 7, the Office Action objected to claims 3-5 as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of limitations of their base claim and any intervening claims.

Claims 3-5 are herein rewritten in independent form to include the limitations of base claim 1.

On page 8, the Office Action objected to claim 6 as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of limitations of its base claim and any intervening claims, as well as overcoming the objection as detailed above.

Claim 6 has been amended herein into independent form to include the limitations of base claim 1. In addition, as discussed above, claim 6 has been amended for clarification purposes and Applicants submit the objection has been overcome.

In view of the above, Applicants submit that claims 3-6 are in condition for allowance.

New Claims

Applicants submit that new claims 10-19 contain allowable subject matter, and therefore, patentably distinguish over the cited art.

As noted by the Office Action on pages 7-9, claims 3-6 contain allowable subject matter. New claims 10 and 11 include features similar to claim 4. New claims 12-15 include the features of claims 3-6, respectively, but incorporate the features of claim 2. New claims 16 and 17 (directed to a method) include features similar to those recited in claims 5 and 6, respectively. New claims 18 and 19 (directed to a computer-readable storage) include features similar to those recited in claims 5 and 6, respectively.

Therefore, Applicants submit that new claims 10-19 contain allowable subject matter, and therefore, patentably distinguish over the cited art.

Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

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If there are any additional fees or credits associated with filing of this response, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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